IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/03/2003

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.6077 of 1998

1. M. Nallathambi
2. M. Ramaswamy
3. M. Dheenadayalan .. Petitioners

-Vs-

1. The State of Tamil Nadu
rep. by the District Collector
of Dharmapuri
Collectorate, Dharmapuri.

2. The District Revenue Officer
Collectorate, Dharmapuri.

3. The Revenue Divisional Officer
Divisional Office
Krishnagiri.

4. The Tahsildar
Uthangarai, Dharmapuri District.

5. Sarojammal .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari as stated therein.

For Petitioners : Mr.N.E.A. Dinesh

For Respondents 1-4 : Mrs. Rani Selvam, G.A.

For Respondent - 5 : Mr.C.R. Muralidahran

:O R D E R

The petitioners seek a writ of Certiorari calling for the records relating to the notification of the District Collector of Dharmapuri, the 1st respondent herein under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978 (Tamil Nadu Act 31 of 1978 in Na.Ka.No.103037/97 (KO-8) dated 20.10.1997 and published in the Dharmapuri

District Gazette, Extra ordinary dated 25.10.1997 in respect of the land of an extent of 1.21.0 hectare in S.No.21/2B, Narasampatti Village, Uthangarai Taluk, Dharmapuri District.

2. The substantial issue that arise for my consideration in the above writ petition is whether the dispute between the petitioners and the fifth respondent herein as to the ownership and possession of an extent of 1.21.0 hectares of land located in Survey No.21/2B, Narasampatti Village, Uthangarai Taluk, Dharmapuri District, would vitiate the acquisition proceedings for the purpose of providing house sites to 52 Adi Dravidars in Narasampatti Village?

3. While the petitioners are the sons of one Munusami Chettiar, the fifth respondent claims that she is the second wife of Munusami Chettiar. On the strength of a registered Will vide document No.57 dated 15.7.1992, the land in question was transferred in the name of the fifth respondent and her

name was also entered in the revenue records as the owner and possessor of the impugned lands as early as 30.11.19 96, which was objected to by the petitioners herein before the revenue authorities.

4. The acquisition proceedings were initiated under the provisions of the Act in the year 1997, objections were called for from Saroja, the fifth respondent herein against the proposed acquisition of the impugned lands for the purpose of Harijan Welfare Scheme, viz. to provide house sites to 52 Adi Dravidars at Narasampatti Village, based on the entries in the revenue records. Concededly, the fifth respondent did not object to the acquisition proceedings and hence, the notification was issued under Section 4(1) of the Act, lands were thus acquired, award was passed and the possession was taken over on 3.1.1998. However, the petitioners contend that the entire acquisition proceedings is illegal and contrary to law, as the petitioners were not given any notice under Section 4(2) of the Act, even though they are the interested parties.

5. The learned Government Advocate appearing for respondents 1 to 4 contends that there is no need to give notice to the petitioners herein under Section 4(2) of the Act, as they were neither considered as the owners of the land nor found to be in possession of the same as per the revenue records, while notification under Section 4(1) of the Act was issued.

6. I have given careful consideration to the submissions of all the parties.

7. It is true that the relationship between Munusami Chettiar and the fifth respondent is strongly disputed by the petitioners. However, such dispute is totally outside the scope of this writ petition.

8. In this regard, I am obliged to refer Section 4 of the Act, which reads as under.
"Section 4:
Power to acquire land. - (1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any

land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.
(2) Before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.
(3)(a) The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;
(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit."

9. A bare reading of Section 4(2) the Act makes it clear that before issuing notification under Section 4 (1) of the Act, the Collector is obliged to call upon the owner or any other persons, who, in the opinion of the District Collector or officer so authorised may be interested in such land, to show cause why it should not be acquired. Therefore, what is contemplated under Section 4(1) & (2) of the Act is that if, in the opinion of the Collector, the fifth respondent is the owner or an interested party with respect to the impugned land sought to be acquired, it is sufficient for the Collector to issue notification to the fifth respondent. But, the Collector is not vested with any power under Section 4(2) of the Act, to resort the dispute between the petitioners and the fifth respondent, as to their respective rights in the impugned lands, which is totally outside the scope of the very Act.

10. In the instant case, the Collector got satisfied that the fifth respondent is the owner with respect to the impugned land as her name was recorded in the revenue records by the competent authority based on a registered Will vide Document No.57 dated 15.7.1992 executed by Munusami Chettiar, viz. the father of the petitioners. Moreover, the petitioners are, even though said to have made representation to the revenue authorities against the name of the fifth respondent entered in the revenue records as the owner and possessor of the impugned land, the learned counsel for the petitioners is not in a position to satisfy this Court that the petitioners have made objection to the impugned acquisition proceedings to the Collector. Therefore, when the fifth respondent, whose name is found in the revenue records as the owner and the possessor of the impugned land, the Collector is right in his opinion to hold that she was the owner with respect to the impugned land and in issuing notice to her as contemplated under Section 4(1) of the Act. Since the fifth respondent failed to object to the impugned acquisition proceedings, I do not see any illegality or irregularity in the impugned acquisition proceedings.

11. That apart, it is trite law that when the award was passed and

possession was taken, the Court should not exercise its power to quash the award, which is a material factor to be taken into consideration before exercising the power under Article 226 of the Constitution of India, vide Municipal Corporation, Ahmed Nagar v. Shah Hyder Beig reported in AIR 2000 SC 671.

12. Finding no merit, the writ petition is dismissed. However, the disposal of the writ petition will not stand in the way of the petitioners to work out their rights against the award paid to the fifth respondent with respect to the impugned acquisition proceedings in appropriate proceedings before the competent civil Court.
In the result, the writ petition is dismissed. No costs.

Index : Yes

Internet : Yes

kpl

To

1. The District Collector of Dharmapuri
Collectorate, Dharmapuri.

2. The District Revenue Officer
Collectorate, Dharmapuri.

3. The Revenue Divisional Officer
Divisional Office, Krishnagiri.

4. The Tahsildar
Uthangarai, Dharmapuri District.

□